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IN THE

Supreme Court of the United States

October Term, 1968.

No. 538.

LAVINO SHIPPING COMPANY,

Petitioner

v.

AMERICAN-WEST AFRICAN LINE, INC., D/S A/S DEN NORSKE AFRIKAOG AUSTRALIE LINIE, WILHELMSENS DAMPSKIBSATIESELSKAB, A/S TONSBERG, A/S TANKFART IV, A/S TANKFART, V, A/S TANKFART VI, and Motor Vessel TANA, Her Engines, Boilers, Tackle, Etc.,

Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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QUESTIONS PRESENTED.

Where other facts support petitioner's responsibility for this loss, where there is an absence of a conflict of decisions, and where petitioner has failed to demonstrate that the question presented is of great importance to the public as distinguished from the parties, has not the petitioner failed to sustain its burden of establishing a basis upon which to grant certiorari?

REASONS FOR DENYING WRIT.

Petitioner's argument is without foundation. First and foremost, it entirely overlooks the other substantial evidence underscoring petitioner's fault not only for the loss but also showing it received just what the records showed it received. The District Court's opinion set forth numerous facts compelling the conclusion there was mishandling by the petitioner (Appendix, page 20). Petitioner's own records showed it received at least as much cargo, if not more (5,059) tons, than was said to be on the ship, or 5,058 tons (Appendix, pages 14, 15). There was, consequently, substantial evidence showing petitioner received the cargo, which evidence required rebuttal on its part. It failed completely to rebut this evidence whether or not the bills of lading were deemed to have had a prima facie effect as to it. Indeed, the overwhelming evidence of mishandling shows that responsibility for this loss lies right where the District Court placed it, i.e., with the petitioner. It is, therefore, abundantly clear that the Court below properly invoked the rule in *McAllister v. U. S.*, 348 U. S. 19, 20 (1954) and sustained the findings and conclusions of the Trial Judge.

Furthermore, petitioner has not shown the decision conflicts with any decision of this court or otherwise. The opinion in *Herd & Co. v. Krawill Machinery Corp.*, 359 U. S. 297, 301 (1959) was concerned only with the question of whether the *Carriage of Goods by Sea Act* itself or the terms of the bill of lading ". . . evidence any intention to limit the liability of negligent agents of a carrier". It was properly held neither the Act nor the bill of lading provided such an extension since the statute did not expressly limit what would otherwise be the agent's common law liability and, moreover, the agent was not a party to or the beneficiary of the contract of carriage. Obviously,

the present case did not deal with limitation of liability provisions which in turn required strict construction of their terms. On the contrary, the issue was solely one of interpreting the evidentiary effect of a bill of lading issued to cover transportation of goods to a United States port in foreign trade. Such a bill of lading has ". . . effect subject to the provisions of this chapter." 46 U. S. C. A. § 1300. The language of the Act itself sets up the bill of lading as prima facie evidence of receipt. 46 U. S. C. A. § 1303(4). Nothing in this record shows the bills of lading were issued other than in accordance with the requirements of the Act and they were therefore entitled to the weight granted them by statute.

Petitioner's argument that the decision imposes an unjust and intolerable economic burden on contract stevedoring in every American port is absurd. In order for a stevedore to rebut the prima facie effect of a bill of lading all that is needed is proof of an accurate tally of the cargo discharged from the vessel and delivered to the consignee. To require stevedores to hire competent employees in order to check the amount of cargo received by them is hardly unreasonable especially since the cost of hiring the checkers will eventually be borne by the carrier in any event. The District Court found the checkers hired by the stevedore were totally unreliable (Appendix, pages 17, 18, 20). The Court below was therefore surely correct in concluding that the decision of the Trial Court was not clearly erroneous (Appendix, page 23).

CONCLUSION.

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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